

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 23 be amended to read as follows:

1 Page 4, line 9, after "IC 22-4-10-5" insert ":".
2 Page 4, line 9, strike "or".
3 Page 4, strike line 10.
4 Page 5, line 9, strike "owning" and insert "**owing**".
5 Page 11, between lines 7 and 8, begin a new paragraph and insert:
6 "SECTION 7. IC 22-4-17-2, AS AMENDED BY P.L.175-2009,
7 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2010]: Sec. 2. (a) When an individual files an initial claim, the
9 department shall promptly ~~follow the procedure described in~~
10 ~~subsections (b) through (e) to~~ make a determination of the individual's
11 status as an insured worker in a form prescribed by the department. A
12 written notice of the determination of insured status shall be furnished
13 to the individual promptly. ~~The notice must include the time by which~~
14 ~~the employer is required to respond to the department's notice of the~~
15 ~~individual's claim, and complete information about the rules of~~
16 ~~evidence and standards of proof that the department will apply to~~
17 ~~determine the validity of the individual's claim, if the employer~~
18 ~~disputes the claim.~~ Each such determination shall be based on and
19 include a written statement showing the amount of wages paid to the
20 individual for insured work by each employer during the individual's
21 base period and shall include a finding as to whether such wages meet
22 the requirements for the individual to be an insured worker, and, if so,
23 the week ending date of the first week of the individual's benefit period,
24 the individual's weekly benefit amount, and the maximum amount of
25 benefits that may be paid to the individual for weeks of unemployment
26 in the individual's benefit period. For the individual who is not insured,
27 the notice shall include the reason for the determination. Unless the
28 individual, within ten (10) days after such determination was mailed to
29 the individual's last known address, or otherwise delivered to the
30 individual, asks a hearing thereon before an administrative law judge,

such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) When an individual files an initial or additional claim for benefits, the department shall promptly furnish a written notice of the employer's benefit liability to each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to the individual and to the employer from whom the individual has mostly recently separated. The notice shall contain at least the following:

- (1) The date.**
- (2) The individual's name.**
- (3) The individual's Social Security account number.**
- (4) The ending date of the individual's base period.**
- (5) The week ending date of the first week of the individual's benefit period.**
- (6) The time by which the employer is required to respond to the notice.**
- (7) A ratio, the numerator of which is the amount of the individual's benefits chargeable to the employer's experience or reimbursable account and the denominator of which is the individual's earnings from the employer.**
- (8) An explanation of the employer's right to protest the claim and the payment of any benefits based on the claim.**
- (9) The place at and time by which a protest described in subdivision (8) must be made.**
- (10) The form and contents of a protest described in subdivision (8).**

(b) (c) Not later than ~~January 1,~~ July 1, 2010, the department shall do the following:

- (1) Establish an unemployment claims compliance center. ~~When~~ an individual files an initial claim after the unemployment claims compliance center is established, the department, before making a determination that the individual is eligible for benefits, shall compare the information provided by the individual making the claim with information from the separating employer concerning the individual's eligibility for benefits. If the information provided by the individual making the claim does not match the information from the separating employer, the department may not pay the individual benefits and shall refer the individual's claim to the department's unemployment claims compliance center for investigation. The department shall provide a written notice to the individual who filed the claim that the individual's claim is being referred to the unemployment claims compliance center, including the reason for the referral.**
- (2) Prescribe a standard form for use by an employer that objects to a claimant's receipt of benefits on any of the following grounds:**

1 (A) The claimant is disqualified under IC 22-4-15-1.

2 (B) The claimant is ineligible under IC 22-4-15-2.

3 (C) The claimant has received deductible income under
4 IC 22-4-5-1 or IC 22-4-5-2.

5 (D) The claimant never has been employed by the
6 employer.

7 (E) The claimant is ineligible or disqualified for any other
8 reason.

9 (d) Whenever an employer submits the form prescribed under
10 subsection (c)(2) within the ten (10) day period described in
11 subsection (g), the department shall send the claim for benefits
12 associated with the employer's objection to the unemployment
13 claims compliance center under subsection (c)(1).

14 ~~(c)~~ (e) After receiving a claim from the department, the
15 unemployment claims compliance center shall contact ~~the separating~~
16 ~~employer~~ all employers that provided information that does not match
17 information provided by the individual making the claim to obtain any
18 information about the claim that is accurate and sufficient necessary
19 for the department to determine whether the individual is eligible for
20 benefits. The center shall also obtain from the employer the name and
21 address of a person to receive without delay notices served on the
22 employer concerning the claim.

23 (d) Except as provided in subsection (e); (f) If the employer has
24 submitted the form prescribed under subsection (c)(2), the
25 department may not pay the individual benefits under this article as
26 long as the discrepancy between the information provided by the
27 individual and the information provided by the individual's separating
28 employer is unresolved. If the information provided by an individual
29 and the information provided by the individual's separating employer
30 does not match; the department shall notify both the separating
31 employer and the individual that they have forty-eight (48) hours to
32 resolve the discrepancy. If the discrepancy is not resolved at the end of
33 the forty-eighth hour, the department shall use the information
34 provided by the employer to determine the individual's eligibility for
35 benefits.

36 (e) If the employer does not respond to the inquiry from the
37 unemployment claims compliance center within five (5) days after the
38 date of the inquiry; the center shall report to the department that the
39 employer has not responded; and the department shall use the
40 information provided by the individual to determine the individual's
41 eligibility for benefits.

42 (f) After the department makes a determination concerning the
43 individual's eligibility for benefits, the department shall promptly
44 furnish each employer in the base period whose experience or
45 reimbursable account is potentially chargeable with benefits to be paid
46 to such individual with a notice in writing of the employer's benefit
47 liability. The notice shall contain the date; the name and Social Security

1 account number of the individual; the ending date of the individual's
 2 base period; the week ending date of the first week of the individual's
 3 benefit period; the time by which the employer is required to respond
 4 to the notice; and complete information about the rules of evidence and
 5 standards of proof that the department will apply to determine the
 6 validity of a claim; if an employer disputes the claim. The notice shall
 7 further contain information as to the proportion of benefits chargeable
 8 to the employer's experience or reimbursable account in ratio to the
 9 earnings of such individual from such employer. Unless the employer
 10 within ten (10) days after such notice of benefit liability was mailed to
 11 the employer's last known address; or otherwise delivered to the
 12 employer; asks a hearing thereon before an administrative law judge;
 13 such determination shall be final and benefits paid shall be charged in
 14 accordance therewith. **for any week in which the individual's**
 15 **eligibility is contested until both the employer and the claimant**
 16 **have had an opportunity to be heard, and the department**
 17 **determines that the claimant is eligible for benefits based on the**
 18 **information provided to the department. If the department**
 19 **determines that the separating employer identified by the claimant**
 20 **is not the claimant's separating employer, the department may not**
 21 **pay benefits under this article until the correct separating**
 22 **employer is notified as required by subsection (b) and has an**
 23 **opportunity to respond as provided in subsection (g).**

24 (g) An employing unit, including an employer, having knowledge
 25 of any facts which may affect an individual's eligibility or right to
 26 waiting period credits or benefits, shall notify the department of such
 27 facts within ten (10) days after the mailing of notice that a former
 28 employee has filed an initial or additional claim for benefits on a form
 29 prescribed by the department.

30 (h) If, after the department determines that additional information
 31 is necessary to make a determination under this chapter:

32 (1) the department makes a request in writing for additional
 33 information from an employing unit, including an employer, on
 34 a form prescribed by the department; and

35 (2) the employing unit fails to respond within ten (10) days after
 36 the date the request is ~~delivered~~ **mailed** to the employing unit;

37 the department shall make ~~the determination~~ **a decision** with the
 38 information available.

39 (i) If:

40 (1) an employer ~~subsequently obtains a determination by the~~
 41 ~~department that the employee is not eligible for benefits;~~ **appeals**
 42 **an original determination granting benefits to a claimant and**
 43 **the determination is reversed on appeal;** and

44 (2) ~~the determination decision to reverse the determination is~~
 45 at least in part based on information that the department requested
 46 from the employer under subsection (h), but which the employer
 47 failed to provide within ten (10) days after the department's

request was ~~delivered~~ **mailed** to the employer;
 the employer's experience account shall be charged an amount equal to
 fifty percent (50%) of the benefits paid to the employee to which the
 employee was not entitled **and for which the employer's experience
 account may be charged.**

(j) If:

(1) the employer's experience account is charged under subsection
 (i); and

(2) the employee repays all or a part of the benefits on which the
 charge under subsection (i) is based;

the employer shall receive a credit to the employer's experience
 account that is equal to the amount of the employee's repayment up to
fifty percent (50%) of the amount charged to the employer's
 experience account under subsection (i).

(k) In addition to the ~~foregoing~~ determination of insured status by
 the department, the deputy shall, throughout the benefit period,
 determine the claimant's eligibility with respect to each week for which
 the claimant claims waiting period credit or benefit rights, the validity
 of the claimant's claim therefor, and the cause for which the claimant
 left the claimant's work, or may refer such claim to an administrative
 law judge who shall make the initial determination with respect thereto
 in accordance with the procedure in section 3 of this chapter.

~~(l) In cases where the claimant's benefit eligibility or
 disqualification is disputed; the department shall promptly notify the
 claimant and the employer or employers directly involved or connected
 with the issue raised as to the validity of such claim; the eligibility of
 the claimant for waiting period credit or benefits; or the imposition of
 a disqualification period or penalty; or the denial thereof, and of the
 cause for which the claimant left the claimant's work; of such
 determination and the reasons thereof.~~

**(l) Whenever a determination is made as to the validity of any
 claim for benefits or the eligibility of any claimant for benefits that
 involves:**

(1) the cancellation of wage credits or benefit rights;

**(2) the imposition of any disqualification, period of
 ineligibility, or penalty; or**

(3) a denial of the claim;

**the department shall mail a written notice to the claimant and each
 employer directly involved or connected with the issue that is the
 basis for the determination. The claimant or an employer may
 protest the determination within the time limits and in the manner
 provided in this section and is entitled to a hearing before an
 administrative law judge.**

(m) Except as otherwise hereinafter provided in this section
 regarding parties located in Alaska, Hawaii, and Puerto Rico, unless
 the claimant or such employer, within ten (10) days after the
 notification required by subsection (k) was mailed to the claimant's or

the employer's last known address or otherwise delivered to the claimant or the employer, asks for a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

(n) For a notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless the claimant or employer, within fifteen (15) days after the notification required by subsection (k) was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks for a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.

(o) If a claimant or an employer requests a hearing under subsection (m) or (n), the request therefor shall be filed with the department in writing within the prescribed periods as above set forth in this section and shall be in such form as the department may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

(p) A person may not participate on behalf of the department in any case in which the person is an interested party.

(q) Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (g).

(r) Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

(s) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer of the claimant's current address or physical location.

SECTION 8. IC 22-4-10-5.5 IS REPEALED [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)].

SECTION 9. [EFFECTIVE UPON PASSAGE] **(a) The department of workforce development shall prescribe the standard form**

1 **required by IC 22-4-17-2, as amended by this act, before July 1,**
2 **2010.**

3 **(b) This SECTION expires July 1, 2010."**

4 Renumber all SECTIONS consecutively.

(Reference is to SB 23 as printed January 6, 2010.)

Senator HERSHMAN